



Proposed Regulation Agency Background Document

Agency name	Department of Taxation
Virginia Administrative Code (VAC) citation	23 VAC10-70-10 through 10-70-70
Regulation title	Virginia Slaughter Hog and Feeder Pig Excise Tax Regulations
Action title	Repeal of Virginia Slaughter Hog and Feeder Pig Excise Tax Regulation Made Obsolete By Statutory Changes.
Date this document prepared	August 6, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Effective November 1, 1986, federal law ("The Pork, Promotion, Research, and Consumer Information Act of 1985", 7 USC § 4801) ceded to the federal government the sole right to levy an excise tax on pork. As a result, the Virginia Slaughter Hog and Feeder Pig Excise Tax provided for by § 3.1-763.9 of the Code of Virginia is no longer imposed. This regulatory action will repeal the Virginia Slaughter Hog and Feeder Pig Excise Tax Regulation.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

As the result of a comprehensive review of all of its regulations, TAX has identified numerous regulations that have been made obsolete by changes in state and federal law. As these regulations are obsolete, they are being repealed. As these regulations are obsolete, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

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Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

This regulatory action will repeal the Virginia Slaughter Hog and Feeder Pig Excise Tax Regulation. Currently, the regulation sections repeat the statute and in the case of 23VAC10-70-40, the section is inconsistent with the statute. 23VAC10-70-40 imposes a three year recordkeeping requirement, where as the statute only requires two years.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

This regulatory action will ease voluntary taxpayer compliance and TAX's administration of the state tax laws by eliminating an obsolete regulation. As this regulation is obsolete the repeal will result in no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The requirements of the proposal are not more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No particular localities will be affected by the proposed repeal.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, TAX is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, TAX is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax Jennifer Lewis, PO Box 27185, Richmond, Virginia 23261-7185, Phone: (804) 371-2341, FAX: (804) 371-2355, E-mail: jennifer.lewis@tax.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	None
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	As these regulation sections are obsolete, their repeal will have no economic impact on individuals, businesses or other entities.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	As these regulation sections are obsolete, their repeal affects no individuals, businesses or other entities.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	As these regulation sections are obsolete, their repeal will result in no costs for individuals, businesses or other entities.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The only alternative would be to keep the regulation sections. By keeping the regulation sections, TAX would continue to have obsolete regulations in force.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while

minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Repealing the regulation sections will make no changes to the Department's policy regarding the Slaughter Hog and Feeder Pig Excise Tax. Repealing the regulation sections will minimize adverse impacts.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Ryan Horsley Page Wilkerson William R. Jones, Jr. Billy Wooding John Parker David Salmons Barry Knight Donald Horsley Bobby Bryan	Taxpayer expressed concern that if the Federal Pork Act is overturned, the Virginia pork industry would no longer be able to continue with its programs.	TAX disagrees. Although the Federal Pork Act preempted the Slaughter Hog and Feeder Pig Excise Tax in Virginia, the Virginia statute has not been repealed. If the federal statute were to be invalidated, the Virginia statute would regain its effectiveness. Repealing the regulation does not hinder Virginia's ability to impose the tax because the regulation sections repeat the statute or are inconsistent with the statute.
J. Carlton Courter, III, Commissioner, Department of Agriculture and Consumer Services	The regulation sections will provide for an orderly transition to a collection at the state level should the federal program be abolished.	The regulation sections merely repeat the statute and in the case of 23VAC10-70-40, the section is inconsistent with the statute. 23VAC10-70-40 imposes a three year recordkeeping requirement, where as the statute only requires two years.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action is not expected to have an impact on family formation, stability and autonomy.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10 through 70		As the Virginia Slaughter Hog and Feeder Pig Excise Tax has been pre-empted by federal law, the regulation has no effect.	Repeal the regulation because it repeats the statute and provides no additional guidance.